

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Oscar & Esther Dell :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Years :  
1973 - 1975.

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Oscar & Esther Dell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

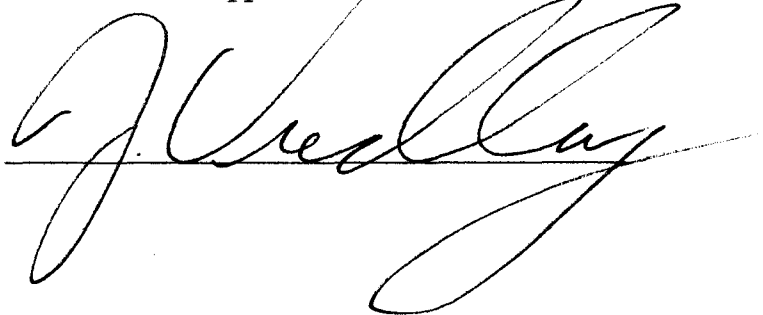
Oscar & Esther Dell  
1033A Heritage Village  
Southbury, CT 06488

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
30th day of October, 1981.





STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Oscar & Esther Dell :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 of the Tax Law for the Years :  
1973 - 1975.

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Donald Charette the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald Charette  
2 Summit Rd.  
Prospect, CT 06712

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
30th day of October, 1981.

*Annunzio A. Depolena*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 30, 1981

Oscar & Esther Dell  
1033A Heritage Village  
Southbury, CT 06488

Dear Mr. \* Mrs. Dell:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Donald Charette  
2 Summit Rd.  
Prospect, CT 06712  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
OSCAR DELL and ESTHER DELL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973, 1974 and	:	
1975.	:	

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Petitioners, Oscar Dell and Esther Dell, 1033A Heritage Village, Southbury, Connecticut 06488, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 23459).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1981 at 2:45 P.M. Petitioners appeared by Donald J. Charette. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners changed their domicile from New York State to Connecticut and, if so, in what year did the change occur.

FINDINGS OF FACT

1. Petitioners, Oscar Dell and Esther Dell, filed a New York State combined resident income tax return for 1973 on which petitioners showed a New York State address. On September 21, 1976 the petitioners filed an amended New York State income tax nonresident return for 1973 showing a Connecticut address and excluding the wages of petitioner Oscar Dell which resulted in a refund.

On that same date the petitioners filed a New York State Income Tax Nonresident Return for 1974 showing a Connecticut address. On March 15, 1976, the petitioners filed a New York State Combined Income Tax Return for 1975 reporting a period of New York residence from January 1, 1975 to June 30, 1975 and showing a Connecticut address. On said return the petitioners reported no New York income for Oscar Dell. On September 21, 1976 the petitioners filed a New York State Income Tax Nonresident Return for 1975 as a corrected return.

2. On January 11, 1977, petitioners signed a consent fixing the period of limitation upon assessment of personal income tax for taxable year 1973 to April 15, 1978.

3. The Audit Division held that petitioners were domiciliaries of New York State for years 1973, 1974 and 1975 and that they were taxable on all income received during said years. A Notice of Deficiency was issued on June 2, 1978 for the above years imposing additional personal income tax for 1974 and 1975 of \$4,438.44, plus interest of \$944.90 and rejecting the refund for 1973 which was based on the amended New York State income tax nonresident return filed September 21, 1976.

4. Petitioner Oscar Dell is president and forty five percent stockholder of Cardi Associates, Inc. located at Straits Turnpike, Middlebury, Connecticut. Cardi Associates, Inc. (A/K/A Cardel Carpet Inc.) is a flooring subcontractor performing work for Heritage Village, a large building development located in Southbury, Connecticut.

5. From 1969 through part of 1972 petitioner Oscar Dell would commuted to work in Connecticut from his Brooklyn residence. Due to illness, petitioner Oscar Dell subleased an apartment at Heritage Village in Southbury, Connecticut,

during 1972. He resided there until October, 1974 when Cardi Associates, Inc. purchased a condominium at Heritage Village for his use.

6. Petitioner Esther Dell and two of petitioners' children resided at 8108 Avenue J, Brooklyn, New York, during the years at issue until November 1975. The reason for petitioner Esther Dell not moving to Connecticut until November 1975 was that both children were attending Brooklyn College where she worked and that petitioner's mother who lived in Brooklyn was ill.

7. Petitioner Oscar Dell provided support for petitioner Esther Dell and on occasion returned to Brooklyn, New York to visit his family. Petitioner Esther Dell also visited her husband in Connecticut. Petitioners maintained bank accounts both in New York and Connecticut.

8. During the years at issue, the petitioners did not own an automobile. Petitioner Oscar Dell drove a corporate car and let his New York driver's license expire before obtaining a Connecticut driver's license.

9. Petitioner Oscar Dell did not belong to any church or civic organizations nor was he a registered voter in either New York or Connecticut during the years in questions. However, he did have a will drawn in Connecticut.

#### CONCLUSIONS OF LAW

A. That a domicile, once established, continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there [20 NYCRR 102.2(d)(2)]. The question of what place shall be considered the domicile of a party is one of fact rather than of law [Pignatelli v. Pignatelli, 8 N.Y.S.2d 10]. Evidence to establish required intention to effect a change in domicile must be clear and convincing. Petitioner Oscar Dell was domiciled in New York State prior to 1972. While he may have intended to abandon his New York domicile in 1972 by the acts of employment and

of subleasing an apartment in Connecticut he did not acquire a new domicile since he did not completely abandoned his New York domicile. His acts might be found to be preparatory to the establishment of a new domicile, but not completed.

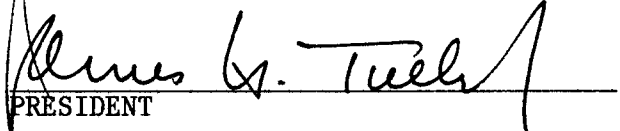
B. That petitioner Esther Dell was domiciled in New York State prior to the years at issue. That petitioners have failed to establish by a preponderance of evidence that she changed her domicile from New York to Connecticut during the years at issue.

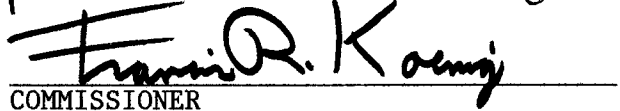
C. That the petition of Oscar Dell and Esther Dell is denied and the Notice of Deficiency issued on June 2, 1978 is sustained, together with such additional interest as may be legally owing.

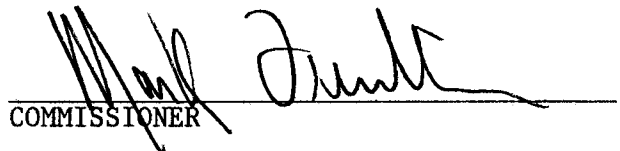
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER